

REMARKS

I. Overview

Claims 1-26 and 31 are pending in the present application. The outstanding issues raised in the Final Office Action of April 21, 2008 (*Final Office Action*) are as follows:

- Claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0107830 (*Nanja*) in view of U.S. Patent Application Publication No. 2003/0005455 (*Bowers*) and further in view of U.S. Patent Application Publication No. 2007/0094086 (*Ikezawa*); and
- Claims 6, 14, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers* and *Ikezawa* and further in view of U.S. Patent Application Publication No. 2004/0199635 (*Ta*).

In response, Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the remarks presented herein.

II. Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja* in view of *Bowers* and *Ikezawa*

Claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers* and further in view of *Ikezawa*. *Office Action*, at pages 2 and 8. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

To make a *prima facie* case of obviousness, the Examiner must determine the “scope and content of the prior art,” ascertain the “differences between the prior art and the claims at issue,” determine “the level of ordinary skill in the pertinent art,” and evaluate evidence of secondary considerations. *Graham v. John Deere*, 383 U.S. 1, 17, (1966); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. ____ (2007); *see also* M.P.E.P. § 2141. When determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences

themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. M.P.E.P. § 2141.02(I).

As discussed below, Applicant respectfully submits that insufficient motivation exists for combining the references in the manner applied by the *Final Office Action*. The Supreme Court in *KSR* stated that it is “important [for an examiner] to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S. April 30, 2007). Indeed, the Court indicated that there should be an “explicit” analysis regarding “whether there was an *apparent reason* to combine the known elements *in the fashion claimed* by the patent at issue.” *Id.* (emphasis added).

Further, the applied combination of references fails to teach or suggest all elements of the claims. The lack of disclosure of all claim elements by the applied references further evidences that the claims are not obvious in view of the references.

A. Insufficient Reason to Combine

The rejection of claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31 should first be withdrawn because the combination of *Nanja* with *Bowers* and *Ikezawa* is improper. In support for the combination of *Bowers* and *Nanja*, the Examiner states that:

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of *Bowers* into the teachings of *Nanja* for the purposes of increasing the network resources efficiency (paragraph 9-11).

Final Office Action, at p. 3.

However, Applicant maintains that, as discussed in Applicant’s previous response, the teaching of “aggregation” provided in *Nanja* is very different from the “aggregation” provided in *Bowers*. For instance, *Nanja* aggregates different data retrieved from different sources as requested by a single user. *E.g., Nanja*, at Abstract. In contrast, *Bowers* aggregates requests (*not*

retrieved data itself) originated by different users (*not* a single user) for the same data (*not* different data) provided by a single source (*not* different sources). *Bowers*, at Abstract.

Applicant has repeatedly pointed out that *Nanja* and *Bowers* are so different from each other that there is no indication that the use of both aggregation methods together would “increase network resources efficiency,” as contended by the Examiner. In fact, the use of both aggregation methods seems to involve the duplication of at least some aggregation efforts, and thus would appear to be detrimental to the efficiency of *Nanja*’s network (contrary to the Examiner’s assertion of increased network efficiency). Moreover, it is not immediately appreciable how the “aggregation” of *Bowers* would work together with the “aggregation” of *Nanja*, if at all. Thus, Applicant further submits that a combination of *Bowers* with *Nanja* would require a substantial reconstruction and redesign of the elements shown in *Nanja*, as well as a change in the basic principle under which *Nanja* was designed to operate. See *In re Ratti*, 270 F.2d 810, 843, 123 USPQ 349, 352 (CCPA 1959).

In response to the above arguments, the *Final Office Action* merely asserts on pages 10-11 thereof that “the motivation to combine *Bowers* with *Nanja* references is to increase the network resources efficiency (paragraph 9-11 of *Bowers*).” Again, the Examiner has failed to offer any explanation whatsoever in support of the contention that the combination of *Bowers* teaching with *Nanja* would not only work, but also result in an increase in the network resource efficiency in the resulting system. As discussed above, it is unclear not only how the combined teachings of *Bowers* and *Nanja* would work together, but also how the combination would result in improved network resource efficiency as opposed to the apparent decrease in network efficiency discussed above.

Accordingly, the combination of at least *Nanja* with *Bowers* is improper, and Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31.

B. Lack of All Claimed Elements**1. Independent Claim 1**

Independent claim 1 recites:

aggregating said information preferences received from said plurality of subscribers into aggregated information preferences, wherein at least two of said aggregated information preferences correspond to different data of said same data source provider

The Final Office Action concedes that *Nanja* does not teach or suggest the above-identified element, but relies upon *Bowers* and *Ikezawa* as teaching or suggesting this element. *Final Office Action*, at pages 2-3 and 11-12. The combination of *Bowers* and *Ikezawa* also fails to teach or suggest this element, as discussed below.

Claim 1 recites that two or more of the aggregated information preferences correspond to different data of a same data source provider. In contrast, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed”) (emphasis added). Thus, *Bowers* fails to teach or suggest the above element of claim 1.

With regard to *Ikezawa*, the *Final Office Action* asserts on page 4 thereof that the “Ikezawa et al. reference is only used to show that a server can receive multiple requests on different data and provide different data to one or more users (paragraph 446).” On page 11, the *Final Office Action* further explains that “Ikezawa teaches a server can provide more than one kind of data to different users (paragraph 446) and Bowers teaches an aggregation module 102 aggregating different requests from different users and receive different services and send to the different users (paragraph 33-34, 50-51, and 61-63).”

However, even assuming that the assertion that *Ikezawa* teaches a server that can receive multiple requests on different data and provide that different data to one or more users is accurate, this teaching falls short of teaching or suggesting aggregating different data of a same

data source provider, as recited by claim 1. Indeed, when the teaching of *Ikezawa* is combined with and considered in light of the express teaching of *Bowers*, one is lead to aggregate those requests for *the same* data.

Merely because different data can be requested in *Ikezawa* does not lead to an aggregation of preferences that correspond to different data, as recited by claim 1. For instance, even assuming that *Bowers* allows for its server to receive multiple requests on different data, *Bowers* would appear to perform its aggregation to aggregate those requests that are for the same data. Accordingly, if the aggregation module 102 of *Bowers* is employed in the manner suggested by the Examiner, then the aggregation performed thereby would aggregate those requests that are for the same data. Thus, the applied combination fails to teach or suggest aggregating information preferences received from a plurality of subscribers where at least two of the aggregated information preferences correspond to different data of a same data source provider.

In addition, Applicant maintains that *Bowers* only discloses aggregating requests for specific media streams. *E.g.*, *Bowers* at ¶ [0050]. Clearly, *Bowers*' requests for streaming media files do not specify "types" of media files selected by a subscriber insofar as they must identify the desired media files themselves. *Id.* at ¶ [0015] and [0033]. The *Final Office Action* asserts on pages 12-13 thereof that "Bowers teaches subscriber's information preferences is a type of a streaming media files (one type out of stock quotes, news and other text streams in paragraph 29)." Applicant disagrees. In *Bowers*, the subscriber's information preferences do not specify at least one type of dynamically changing information. Instead, the subscriber must identify the desired media file themselves. While the specific media file identified may be of a type, such as stock quotes, news, etc., *Bowers* does not teach or suggest that a subscriber's information preferences specify such a type, but instead the subscriber merely identifies the specific media file itself (rather than any "type" information), see *Bowers* at ¶ [0015] and [0033].

Therefore, the combination of *Nanja*, *Bowers*, and *Ikezawa* even if proper, does not teach or suggest every element recited in claim 1. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 1.

2. Independent Claim 9

Independent claim 9 recites “means for assembling two or more of said information preferences gathered from said plurality of subscribers that correspond to different data of a same data source provider into an aggregate preference. . . .” Similarly as noted above with respect to claim 1, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed”) (emphasis added). Even if *Bowers* allows for its server to receive multiple requests on different data (as the Examiner asserts with reliance on *Ikezawa*), *Bowers* would appear to perform its aggregation to aggregate those requests that are for *the same* data. Thus, the applied combination does not teach or suggest the above element of claim 9.

Therefore, the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest every element recited in claim 9. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 9.

3. Independent Claim 17

Independent claim 17 recites:

code for assembling said one or more preferences received from said plurality of subscribers into an aggregate preference, wherein at least two of said assembled one or more preferences correspond to different data of a same information source provider

Again, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed”) (emphasis added). Even if *Bowers* allows for its server to receive multiple requests on different data (as the Examiner asserts with reliance on *Ikezawa*), *Bowers* would appear to perform its aggregation to aggregate those requests that are for *the same* data.

Therefore, Applicant respectfully asserts that the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest at least this element recited in claim 17.

Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 17.

4. Independent Claim 25

Independent claim 25 recites:

aggregating, by said enhanced broadcast server, said preferences of said plurality of subscribers for different information available from one of said at least one data provider to form a superset of said information that is of interest to said plurality of subscribers. .

The *Final Office Action* concedes that *Nanja* does not teach or suggest this element of claim 25, but relies upon *Bowers* as teaching or suggesting this element. *Final Office Action*, at pp. 7-8. However, Applicant submits that *Bowers* does not teach or suggest aggregating preferences of a plurality of subscribers for different information available from one of at least one data provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed”) (emphasis added). Even if *Bowers* allows for its server to receive multiple requests on different data (as the Examiner asserts with reliance on *Ikezawa*), *Bowers* would appear to perform its aggregation to aggregate those requests that are for *the same* data.

Therefore, Applicant respectfully asserts that the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest at least this element recited in claim 25. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 25.

5. Dependent Claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26 and 31

As noted above, the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest every element recited in independent claims 1, 9, 17, and 25. Dependent claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26, and 31 each depends from one of claims 1, 9, 17, and 25, and thus each dependent claim inherits all the elements of its respective independent claim.

Consequently, the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, also fails to teach every element of dependent claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26 and 31.

Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26 and 31.

III. Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja*, *Bowers*, *Ikezawa* and *Ta*

Claims 6, 14, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers*, *Ikezawa*, and *Ta*. *Final Office Action*, at p. 6. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

A. Lack of All Claimed Elements

As noted above, the combination of *Nanja*, *Bowers*, and *Ikezawa* fails to teach or suggest every element recited in independent claims 1, 9, and 17. The Examiner does not rely upon *Ta* as curing the above-noted deficiencies, nor does it appear to do so. Therefore, the combination of the combination of *Nanja* with *Bowers*, *Ikezawa*, and *Ta*, even if proper, fails to teach or suggest all of the elements of independent claims 1, 9, and 17. Dependent claims 6, 14, and 22 depend from claim 1, 9, and 17, respectively, each dependent claim thus inheriting all the features of its respective independent claim.

Consequently, the combination of the combination of *Nanja* with *Bowers*, *Ikezawa*, and *Ta*, even if proper, also fails to teach or suggest all of the elements of dependent claims 6, 14, and 22. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 6, 14, and 22.

IV. Conclusion

In view of the above, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. M066 from which the undersigned is authorized to draw.

Dated: May 5, 2008

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.8(a)(4).

Dated: May 5, 2008

Signature: Donna Forbit
(Donna Forbit)

Respectfully submitted,

By 

Jody C. Bishop

Registration No.: 44,034

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-8007

(214) 855-8200 (Fax)

Attorney for Applicant